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February 26, 2019

**Testimony of State Representative Susan Johnson
In Support of House Bill 6916, An Act Concerning Liability for Unfair Insurance Practices
in Worker's Compensation Claims**

Chair Porter, Chair Kushner; Ranking Members, Vice Chairs and Distinguished Members of the Labor and Public Employees Committee,

I am pleased to have the opportunity to submit testimony in support of **House Bill 6916, An Act Expanding Remedies and Potential Liability for Unreasonably Contested or Delayed Workers' Compensation Claims.**

I also support: **Senate Bill 164, An Act Including Certain Mental Or Emotional Impairments Within The Definition of "Personal Injury" Under The Workers' Compensation Statute, and, House Bill 5883, An Act Requiring Workers' Compensation Insurance Coverage For Detoxification for Certain Injured Employees.**

I'm State Representative Susan Johnson, I represent the 49th House District of the Town of Windham. This issue was brought to my attention by several of my constituents who have sustained permanent injuries because of the dilatory tactics of insurance companies acting on behalf of employers. Another of my constituents is a Board Certified Worker's Compensation Specialist, Attorney Howard Schiller, who is out of state now.

As you know, the Worker's Compensation system was the grand bargain between business and labor. The system was set up to insure that injured employees would have access to health care so they would not financially burden themselves and society with permanent incapacity caused by their employment, and in return to protect the employer from litigation that could potentially put the employer out of business by a personal injury law suit. So in general there are limitations

on coverage and the only proof the claimant must provide is that their injury was sustained at work.

The protections that are intended to inspire the health insurance companies to quickly cover the injured employee are not comparable to the protections afforded to those who benefit from Medicare, Medicaid, the Affordable Care Act, an Employee Benefit Plan, or a Personal Injury Claim. One reason for this is that health insurance and Medicaid and Medicare are governed by medical necessity statutes.

Protections written into our law that protects injured claimants in the Connecticut Unfair Insurance Practices Act (CUIPA) are greater than what is available to them under the Connecticut Worker's Compensation Act. Pursuant to the CUIPA, if additional harm is caused to a claimant by an insurance company because the company failed to make timely medically necessary coverage available to an already injured claimant then potential damages are more in line with the actual harm caused. Those damages may come from the insurer that caused the injury. No such remedy is available under our Worker's Compensation Act.

If there is any question regarding whether Connecticut's existing statutes sufficiently motivate insurance companies enough to make timely payments for medically necessary care for injured employees please see the decision of our Supreme Court in **DeOliveira v. Liberty Mutual Insurance Company**, 273 Conn. 487 (2005). This case actually calls for additional legislation to correct the deficiencies in existing Connecticut law.

In the **DeOliveira** case the Workers Compensation Commission concluded that the claimant suffered from an injury incurred at work and should be compensated for it. Unfortunately for **Mr. DeOliveira**, despite his eligibility for benefits, Liberty Mutual failed to make timely payments for his medically necessary health care. The delay in treatment caused him Post Traumatic Stress Disorder for which the Worker's Compensation Commission found Liberty Mutual responsible. The Supreme Court, however held essentially that the Commission's authority to compensate the claimant for delay in receiving medically necessary health care was statutorily limited to a mere fine payable by the employer/insurance company even when care is unreasonably delayed and the claimant is severely injured as a result, and that the claimant is without the legal right to be made whole from the injuries caused by the delay with payment for his actual damages.

It has been more than 14 years since the **DeOliveira** case was decided. Doctors and lawyers are complaining about the resistance insurance companies are putting up when they have to cover injured workers. I am sad to say that some of these delays in care are responsible for serious medical consequence and cause additional permanent damage to already injured claimants. During their prolonged period of recovery some of these poor unfortunates also have to apply for Social Security Disability, Medicaid and Medicare. At this later point medically necessary treatment will finally be provided and the person is usually errantly disabled. Hence the Worker's Compensation program is not protecting employees or the government from future liability in the form of Medicare and Medicaid payments.

One other aspect of the reality of justice delayed is justice denied is something that should be seriously considered by this committee: That is the relationship between work related injuries and Opioid use which eventually leads to abuse. See attached hereto **Stakeholder Conferences; March 1, 2017 and October 4, 2017 by the Connecticut Department of Public Health**. This report connects work related injuries with opioid use and addiction. The longer an injured worker suffers in pain the longer the worker will be treated for the pain with medications. The delay in medically necessary care is contributing to the addiction epidemic our society is faced with. How ironic that the insurance industry and the businesses are unwittingly contributing to this costly situation. Id. If merely treating these injuries as soon as possible can lead to a reduction in addiction then everyone should work to make this happen.

This is a cost shift that our law should not tolerate. We must carefully consider and better understand how much we have to lose if this cost shifting continues. With the possibility of substantial changes in health care access we should determine and fix all we can in our health care access and cost systems. The Supreme Court was constrained by a law that should be changed from doing the right thing in the **DeOliveira** case. It is high time that we policy makers act to ensure that no future injured worker suffers the same fate as Mr. DeOliveira, and that insurers are much more highly motivated to timely supply necessary medical care to any injured worker covered by the Worker's Compensation Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Johnson", with a stylized, cursive script.

Representative Susan Johnson
49th Assembly District